

EXHIBIT 5

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO

3 Z.H., by and through KEVIN
4 HUTCHENS and CHRISTIN
5 HUTCHENS, individually,
and as parents and next
friends of Z.H.,

6 Plaintiffs, Case No. 1:14-cv-00176-CAB

7 vs.

8 ABBOTT LABORATORIES, INC.,

9 Defendant.
~~~~~

10 DEPOSITION OF

11 GODFREY P. OAKLEY, JR., M.D., MSPM

12 March 11, 2016

13 8:55 a.m.

14  
15 1201 West Peachtree Street, N.W.  
16 14th Floor  
17 Atlanta, Georgia

18  
19 Kara Barger, CCR No. B-1496

1 A. Yes.

2 Q. -- prior to your last trial testimony?

3 A. Yes.

4 Q. Okay. Thanks.

5 A. I usually keep them in my pocket.

6 Q. And let me ask you this.

7 Since you submitted your report in this  
8 case, in the Hutchens case, have you reviewed any  
9 additional information other than what's reflected in  
10 your report for this case related to Depakote?

11 A. Other than this paper I gave you this  
12 morning, I mean I reviewed that. Then I reviewed the  
13 citations that I had for, you know, my report.

14 Q. Okay. You say the paper that you gave  
15 me --

16 A. Well --

17 Q. -- this morning?

18 A. -- this table. I'm sorry.

19 Q. All right.

20 (Defendant's Exhibit 3 was marked for  
21 identification.)

22 Q. (By Mr. Marshall) So, Doctor, I'm showing  
23 you what's been marked as Exhibit 3.

24 Can you identify what that is, please?

25 A. This is a copy of a table, 1.1, from

1 Dr. Holmes's textbook or book at least entitled  
2 Congenital -- Common Malformations, Dr. Lewis Holmes,  
3 published by Oxford in 2011. This is a table that  
4 lists recognized human teratogens in 2009.

5 Q. And what is the significance of Exhibit 3  
6 to your opinions in this case?

7 A. Well, it's a list of the known human  
8 teratogens; and it's a rather finite list. And it's  
9 got Accutane. It's got thalidomide and has valproic  
10 acid on it. And those have been parts of things I've  
11 discussed before.

12 Q. Okay. Is there anything about Exhibit 3  
13 that you believe is specific to the Hutchens case?

14 MR. SAMPSON: Object to form.

15 THE WITNESS: My testimony has been pretty  
16 general, you know. So it's hard to answer  
17 questions like that. It certainly backs up what  
18 my expert witness reports are about.

19 Q. (By Mr. Marshall) And, Exhibit 3, when is  
20 it that you first looked at that document?

21 A. This morning at about 5:30.

22 Q. And prior to this morning at 5:30 you had  
23 not looked at Exhibit 3?

24 A. I had not.

25 Q. Okay. And how is it that you came to be

1 aware of Exhibit 3?

2 A. Well, when I was thinking about the  
3 testimony, I had had -- I think someone asked me a  
4 question about was there a list someplace of the  
5 known human teratogens. And I thought the people  
6 with this litigation -- everybody would know that and  
7 apparently people didn't know that. And this morning  
8 I thought about it and went looking for it and found  
9 it.

10 Q. Can I see --

11 A. You may.

12 Q. So do you agree that all of the drugs that  
13 are listed here in Table 1.1 of Exhibit 3 are human  
14 teratogens?

15 A. This is Dr. Holmes's table. Okay?

16 And my point out of this table is that the  
17 thalidomide and valproic acid and Accutane are three  
18 of the worst ones on that list.

19 Q. Okay. And show me how it is that you can  
20 determine by looking at Exhibit 3, just looking at  
21 Exhibit 3, that valproic acid, Accutane, and  
22 thalidomide are three of the worst teratogens.

23 A. Well, I do that from my experience and  
24 what I know about birth defects epidemiology and the  
25 causes of birth defects. But it's certainly on that

1 list, and it shows that it's a finite list.

2 Q. But my question is: Is there anything on  
3 Exhibit 3 that quantifies in any way the risk with  
4 the teratogens that are listed?

5 A. It doesn't do that, no.

6 Q. And my question is -- you've identified  
7 the drugs that are listed in Exhibit 3 as teratogens.

8 Do you see those?

9 A. This table does that, yes, sir.

10 Q. Yes, sir.

11 And do you agree with this table in  
12 Exhibit 3 that all of these drugs are, in fact,  
13 teratogens?

14 A. I have not reviewed all of those to make  
15 that determination.

16 Q. So, for example, cyclosporin, what is  
17 that?

18 A. It's an antiinfectious disease drug, I  
19 believe. I don't know it in detail.

20 Q. And is it a human teratogen?

21 A. I don't know the evidence on that.

22 Q. And lithium?

23 A. Lithium.

24 Q. What is lithium?

25 A. Lithium is a drug that's often used for

1 manic psychiatric disorders and it causes birth  
2 defect.

3 Q. So lithium is a human teratogen?

4 A. I believe that it is, yes.

5 Q. Okay. And what is the rate of major  
6 congenital malformations with lithium?

7 A. It's hard to tell.

8 Q. Can you --

9 A. It's done by -- I'm sorry. I didn't mean  
10 to interrupt.

11 Q. That's okay.

12 A. The evidence for lithium is pretty much  
13 related to the -- sort of the uniqueness of the birth  
14 defect, and it hasn't been studied as far as I know.

15 Q. So can you give me a rate of major  
16 congenital malformations that is associated with  
17 lithium?

18 A. I don't know that I can.

19 Q. Can you say that the rate of major  
20 congenital malformations with lithium is more or less  
21 than 10 percent?

22 A. I don't know that.

23 Q. How about in regard to warfarin? Warfarin  
24 is something that is given as a blood thinner?

25 A. It is.

1 Q. Is warfarin a human teratogen?

2 A. It is.

3 Q. And what is the rate of major congenital  
4 malformations with warfarin?

5 A. I don't know the answer to that.

6 Q. Do you know whether the rate of major  
7 congenital malformations with warfarin is more or  
8 less than 10 percent?

9 A. I don't know.

10 Q. Obesity, severe obesity, is that a human  
11 teratogen?

12 A. I think that's questionable.

13 Q. Okay. Dr. Holmes lists severe obesity on  
14 his recognized human teratogens in Exhibit 3,  
15 correct?

16 A. It's not a drug.

17 MR. SAMPSON: Is it under drugs?

18 THE WITNESS: No.

19 Q. (By Mr. Marshall) I didn't say it was  
20 under drugs.

21 Did I say it was under drugs?

22 A. You did not.

23 Q. Okay. Severe obesity, is that a  
24 recognized human teratogen?

25 A. That's a lot debate about that.

1 Q. Okay. Do you disagree with Dr. Holmes  
2 when he identifies severe obesity as a recognized  
3 human teratogen?

4 A. I'd like to look at it a little bit more.

5 Q. So you don't know the answer to that?

6 A. That's correct.

7 Q. Can you tell me what the rate of major  
8 congenital malformations is with severe obesity?

9 A. I don't know that.

10 Q. Hypothyroidism, that's an internal  
11 condition that's listed by Dr. Holmes as a recognized  
12 human teratogen.

13 Do you agree that hypothyroidism is a  
14 recognized human teratogen?

15 A. Again, I didn't come prepared to review  
16 all those drugs and all the evidence behind them. So  
17 I can't answer that.

18 Q. Okay. I'm just following this up because  
19 you brought this to the deposition and you thought  
20 this was important for your opinions in this case,  
21 correct?

22 A. (Witness nods head affirmatively.)

23 Q. Is that correct?

24 A. Yes.

25 Q. Okay. Do you believe that Exhibit 3 is

1 important for your opinions in this case?

2 MR. SAMPSON: Objection; form, asked and  
3 answered.

4 THE WITNESS: I'm sorry?

5 MR. SAMPSON: Go ahead.

6 THE WITNESS: Say again. What was your  
7 question?

8 Q. (By Mr. Marshall) Do you believe that  
9 Exhibit 3 is important for your opinions in this  
10 case?

11 MR. SAMPSON: Same objection.

12 Go ahead.

13 THE WITNESS: I do.

14 Q. (By Mr. Marshall) Okay. What is  
15 efavirenz? That's e-f-a-v-i-r-e-n-z.

16 A. May I see it?

17 Q. Sure.

18 A. I don't know.

19 Q. Do you know what the rate of major  
20 congenital malformations is with efavirenz?

21 A. I do not.

22 Q. How about etretinate? Do you know what  
23 etretinate is?

24 A. It's a variant of Accutane.

25 Q. So is it a variant of isotretinoin?

1 A. Yes, in that family.

2 Q. How about androgenic hormones? Do you  
3 know what they're used for?

4 A. Yes.

5 Q. What are they used for?

6 A. Well, they're used for -- to treat people  
7 that need androgens, and they can cause masculinizing  
8 effects of fetuses.

9 Q. What's a masculinizing effect of fetus?

10 A. Making a girl fetus look like a boy, to  
11 have hair. I mean it just -- that's what masculine  
12 things do.

13 Q. Oh, you're saying masculine?

14 A. Yeah.

15 Q. All right. How about paroxetine? What is  
16 that?

17 A. I don't know exactly what that is.

18 Q. Do you know what the rate of major  
19 congenital malformations is with paroxetine?

20 A. I do not.

21 Q. You also provided a book as part of your  
22 production today, and it's called Dark Remedy: The  
23 Impact of Thalidomide and its Revival as a Vital  
24 Medicine, correct?

25 A. Yes.

1

2 C E R T I F I C A T E

3

4 STATE OF GEORGIA:

5 COUNTY OF FULTON:

6

7 I hereby certify that the foregoing  
8 transcript was taken down, as stated in the  
9 caption, and the questions and answers thereto  
10 were reduced to typewriting under my direction;  
11 that the foregoing pages 1 through 80 represent  
12 a true, complete, and correct transcript of the  
13 evidence given upon said hearing, and I further  
14 certify that I am not of kin or counsel to the  
15 parties in the case; am not in the regular  
16 employ of counsel for any of said parties; nor  
17 am I in anywise interested in the result of said  
18 case.

19 This, the 23rd day of March, 2016.

20

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KARA BARGER, GA CCR-B-1496

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